New Source Review
#03-67(APCB)

Overview

This rule revises Indiana's New Source Review (NSR) rules to address changes made by U.S. EPA. It includes some variations from the federal rule to provide better environmental protection to the citizens of Indiana.

Citations Affected

Adds 326 IAC 2-2.2 regarding clean unit designations in attainment areas; 326 IAC 2-2.3 regarding pollution control projects in attainment areas; 326 IAC 2-2.4 regarding plantwide applicability limitations in attainment areas; 326 IAC 2-2.6 regarding federal NSR requirements for sources subject to P.L. 231-2003, Section 6; 326 IAC 2-3.2 regarding clean unit designations in nonattainment areas; 326 IAC 2-3.3 regarding pollution control projects in nonattainment areas; and 326 IAC 2-3.4 regarding plantwide applicability limitations in nonattainment areas. Amends 326 IAC 2-1.1-7 regarding permit fees; 326 IAC 2-2 regarding Prevention of Significant Deterioration (PSD) requirements; 326 IAC 2-3 regarding emission offset; 326 IAC 2-5.1 regarding new source construction; 326 IAC 2-7-10.5 regarding Part 70 source modifications; 326 IAC 2-7-11 regarding administrative permit amendments; and 326 IAC 2-7-12 regarding permit modifications. Repeals 326 IAC 2-2.5 regarding pollution control projects.

Affected Persons

Owners and operators of existing stationary sources that plan to make a modification subject to major NSR and citizens of Indiana.

Reason or Reasons for the Rule

The purpose of this rule is to revise Indiana's New Source Review (NSR) rules to address changes published by U.S. EPA in the Federal Register on December 31, 2002 (67 FR 80186).

Economic Impact of the Rule

The fiscal impact on regulated sources is expected to be positive. Because the new rules are expected to be neutral or beneficial in terms of environmental impact, no adverse fiscal impact or health care costs are expected.

In the course of the federal rulemaking on NSR Reform, U.S. EPA was required to assess both the costs and the benefits of the intended regulation. This assessment was available for review and comment. Therefore, costs have already been assessed in the federal rulemaking process. In addition, the Public Law 104-4, Unfunded Mandates Reform Act, requires an assessment if the cost of a federal rule will be greater than $100 million dollars on the regulated community and the states and local regulatory agencies. This assessment has been completed for the federal rule and U.S. EPA indicated the rule will provide an opportunity for a savings to the regulated community with no adverse impact on public health.

Regulated entities should see significant savings because many modifications that were subject to NSR and for which the state currently collects fees will be exempt under the new rules. The fees associated with these modifications will no longer be required. This will result in a reduction in fees collected by state government. No fiscal impact on local government is anticipated.

Currently, the fee associated with a PSD modification review is usually greater than $15,000. Under the new rules, many of these modifications will now be exempt from PSD and only required to get a Part 70 minor source modification at $500, a significant source modification at $3,500, or a permit modification for which there is no cost. A PSD review currently requires payment of a significant source modification fee in addition to the PSD fees.

There will be no fees for automatically designated clean units. If a source otherwise applies for a clean unit designation, IDEM proposes a fee consistent with the current BACT review and air quality analysis fee.

For pollution control projects, the $3,500 fee for the listed projects has been removed, resulting in a savings for the source and a reduction in fee collection by the state.

For a source that applies for a PAL, the fees in 326 IAC 2-1.1-7 are anticipated to be less than the fees associated with ten years of modifications that the PAL would replace. The state would receive fewer fees for this option. IDEM invites comment on the fees associated with a PAL and encourages commentors to provide cost information if possible.

Benefits of the Rule

U.S. EPA stated that these revisions "are intended to provide greater regulatory certainty, administrative flexibility, and permit streamlining, while ensuring the current level of environmental protection and benefit derived from the program and, in certain respects, resulting in greater environmental protection" (67 FR 80186, December 31, 2002).

Description of the Rulemaking Project

Basic Purpose

The purpose of this rule is to revise Indiana's New Source Review (NSR) rules to address changes published by U.S. EPA in the Federal Register on December 31, 2002 (67 FR 80186).

The new source review program is a critical tool for states to protect air quality. It is intended to ensure that new sources, or modifications that would increase emissions at an existing source are built in a way that uses the most up to date pollution control technology or pollution prevention techniques. Technology that allows manufacturers to continue to produce high quality products while decreasing their impact on the environment is constantly developing. Sometimes progress is incremental and gradual, and other times there are dramatic advances that allow significant decreases in emissions that are cost-effective to implement. The policy behind new source review, therefore, is that as older plants are replaced or upgraded, increasingly effective pollution controls will be used and air quality will improve.

With brand new facilities, application of new source review is fairly straightforward. New plants with potential emissions over a certain threshold should go through the new source review process. This rulemaking does not change applicability to new sources.

A much more complicated part of the NSR program has always been deciding when a project proposed by an existing source ought to be reviewed under this program. Over the years, U.S. EPA has developed hundreds of pages of guidance to help business, the public, and state permitting agencies determine when a modification is subject to NSR. There are complicated provisions that allow companies to track recent increases and decreases at their operations so that the "net" impact of the proposed modification can be determined.

U.S. EPA's NSR reform addressed the issue of when modifications would require new source review under the federal system. It contains two key changes to the method used to determine the emission increase resulting from a physical change or a change to the method of operation. Those changes are further described below. A project that is exempt under any of the tests is exempt from NSR.

IDEM has analyzed the federal changes to determine their potential impact on air emissions and, therefore, air quality in Indiana. This analysis has included reviewing past IDEM permitting decisions to determine whether an environmentally protective outcome would have resulted under the new rules, reviewing similar analysis done by other states, and discussions with permit staff in other states. With a few exceptions addressed below, IDEM believes that adopting the federal changes will not worsen air quality in Indiana. IDEM invites comment on this conclusion and encourages commentors to be as specific as possible.

P.L. 231-2003, SECTION 6, passed by Indiana legislators this year, prohibits the environmental boards from adopting a new rule before July 1, 2005, if the new rule would require certain industries to comply with standards of conduct that exceed federal standards. A new rule 326 IAC 2-2.6 has been drafted to comply with this legislation.

Background of Federal Rules

On December 31, 2002, the United States Environmental Protection Agency (U.S. EPA) published a final rule concerning regulations governing New Source Review (NSR) programs mandated by parts C and D of Title I of the Clean Air Act (CAA). U.S. EPA stated that these revisions "are intended to provide greater regulatory certainty, administrative flexibility, and permit streamlining, while ensuring the current level of environmental protection and benefit derived from the program and, in certain respects, resulting in greater environmental protection" (67 FR 80186, December 31, 2002). The applicability of the permit program is based on whether a new source or a modification to an existing source results in an increase in emissions above certain amounts. The December 31, 2002, rules change the method for determining the magnitude of the change in emissions resulting from a modification to an existing source. They do not change the federal provisions regarding applicability to new sources. These changes include how historical, or "baseline," emissions are determined and an actual-to-projected-actual methodology for

determining whether the modification will increase emissions. The new rules also provide optional applicability tests for sources that have accepted plantwide applicability limitations (PALs), sources that have designated clean units, and sources engaging in pollution control projects (PCPs). The December 31, 2002, rules revised amendments that were originally proposed in the July 23, 1996, Federal Register. More information regarding the background of the regulations is provided in the December 31, 2002, Federal Register notice.

Part C of Title I of the CAA requires states to include, in their state implementation plan (SIP), emission limitations and other measures that are necessary to prevent significant deterioration of the air quality in each region designated as attainment or unclassifiable for federal air quality health standards. Section 51.166 of Title 40 of the Code of Federal Regulations (40 CFR 51.166) contains the specific minimum requirements for a PSD program. The PSD program is a preconstruction review program that requires review of major new sources of air pollution emissions and major modifications of existing sources located in attainment areas where air quality meets health based standards. If a state does not have a PSD program as an approved part of its SIP, a state may be delegated the authority to implement and enforce the federal PSD program contained in 40 CFR 52.21.

Similar to the PSD program, Part D of Title I of the CAA requires states to include, in their SIP provisions, preconstruction permits for construction and operation of new or modified major sources located in nonattainment areas. Section 51.165 of Title 40 of the Code of Federal Regulations (40 CFR 51.165) and Appendix S of 40 CFR Part 51 contain the specific minimum requirements for a nonattainment new source review program.

The December 31, 2002, rule revisions require states with approved SIPs, including Indiana, to adopt the federal NSR reform amendments or equivalent provisions no later than January 2, 2006. States that have been delegated the authority to implement the federal rules are to implement the federal NSR reform amendments no later than March 3, 2003.

Numerous parties have filed a lawsuit in the D.C. Circuit Court challenging the final NSR rules claiming that they will result in greater air emissions than the current rules. They also requested that the court stay the final NSR rule revisions. The stay was denied, but the lawsuit has been put on an expedited schedule. This legal action may have an impact on Indiana's rulemaking effort.

On November 7, 2003, U.S. EPA published a notice of reconsideration in the Federal Register (68 FR 63021) for specific parts of the December 31, 2002, NSR Reform rule. U.S. EPA made two clarifications to the existing rules and added a new definition for "replacement unit". IDEM has included the clarifications that a replacement unit is an existing emissions unit and that a modification to an existing emissions unit is not considered a new emissions unit under the PAL. IDEM did not include the new definition since the Equipment Replacement Rule published on August 27, 2003 (68 FR 63021) is not part of this rulemaking.

Background of State Rules

Since September 30, 1980, IDEM has been U.S. EPA's delegated authority for implementation of the federal PSD program in Indiana. Beginning in 1999, Indiana conducted state rulemakings to update and correct the state PSD rule at 326 IAC 2-2 so the rule could be submitted to U.S. EPA and approved into the SIP. After working informally with U.S. EPA Region V during the state rulemakings, Indiana submitted the updated and corrected PSD rule to U.S. EPA on February 1, 2002, for approval into the SIP. After a formal review, the U.S. EPA published a notice in the March 3, 2003, Federal Register informing the public that U.S. EPA conditionally approved, as a revision to the Indiana State Implementation Plan (SIP), the Prevention of Significant Deterioration (PSD) rules submitted by Indiana. This approval went into effect on April 2, 2003, at which time the state PSD rule at 326 IAC 2-2 became federally enforceable under the CAA. This means that the PSD program is implemented by Indiana using the state rules in an approved SIP rather than implemented using delegated authority under the federal program. As a condition of the approval, Indiana must make certain corrections to the state rule which U.S. EPA specified in its conditional approval within one (1) year of the effective date of the federal rule. The Air Pollution Control Board adopted the corrections as a final rule on December 3, 2003. The rule action to correct the deficiency in the PSD program (LSA #03-68) and this rulemaking on the NSR provisions (LSA #03-67) are completely independent of each other.

Having SIP approval means that Indiana's PSD permits are subject to the same procedures as all other Indiana air permits, including those for new or modified major sources in nonattainment areas and minor new source review anywhere in the state. Draft permits are subject to public review and comments by any affected party, including the U.S. EPA. Indiana's administrative and judicial review process is available to rule on objections to final permit decisions.

Indiana's nonattainment new source review rule in

326 IAC 2-3 has been approved as a portion of the SIP since December 6, 1994.

Any rule changes resulting from this rulemaking will be submitted to U.S. EPA for approval as an amendment to the SIP upon promulgation.

Applicable Federal Law

The Clean Air Act (CAA) mandates a new source review program for major sources of air pollution in parts C and D of Title I. This mandate is located in two (2) programs in the CAA: NSR PSD (part C) and NSR for Nonattainment areas (part D). The purpose of parts C and D is to protect human health and welfare from any actual or potential adverse effects from air pollutants. It also preserves the air quality in national parks, ensures economic growth will occur in a manner consistent with the preservation of existing clean air resources, and provides for careful evaluation of the consequences of permitting decisions both in Indiana and other states.

U.S. EPA, through 67 FR 80186, developed new NSR language regarding applicability at existing major sources. The state, according to 67 FR 80241, must develop or adopt rules in accordance with U.S. EPA's new rules by January 2, 2006. However, according to the CAA section 116 (42 U.S.C. 7416) Indiana may adopt or enforce, "(1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution [but] such state... may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section." Therefore, Indiana may adopt its own version of the NSR rules to comply with 67 FR 80241 as long as Indiana's rules are at least as stringent as U.S. EPA's NSR reform rules. U.S. EPA has been asked for clarification on a number of provisions in the new federal NSR rules. Until they are able to provide responses, it is not clear what deviations from the federal language will be approvable by U.S. EPA. IDEM staff have been working closely with U.S. EPA staff to ensure approvability. U.S. EPA has not identified any approvability issues with the language that IDEM is recommending for adoption by the board.

IDEM recognizes the importance as a matter of national environmental policy that the minimum elements of the new source review programs for major sources are established by the federal CAA and by federal regulations. Therefore, these requirements are expected to be generally consistent across the country. Nonetheless, it is not unusual for states to adopt rules that contain provisions that are more stringent than the minimum federal requirements or contain additional provisions that meld the federally-mandated program with existing state programs. Indiana has long-standing provisions that are more stringent with respect to maximum allowable increases under the PSD rules. In addition, even after the 1990 amendments to the federal Clean Air Act removed the mandate, Indiana has maintained the authority to regulate certain hazardous air pollutants (including mercury) under PSD.

In addition to those longstanding differences in Indiana's rule, IDEM is recommending a change to the retroactive designation of clean units because the federal provisions would result in greater air emissions than the current state program. IDEM did consider whether to recommend changes to improve the ability to verify compliance, but concluded that relatively minor revisions to the existing nonrule policy document regarding annual compliance certification could accomplish that purpose.

The draft rules integrate, for the most part, the federal changes into Indiana's permitting rules. It is not possible to incorporate the federal rules either by reference or verbatim, because the federal program relies heavily on state minor source permitting programs. Therefore, IDEM is also recommending changes to rules other than the major new source review rules as necessary to implement the federal provisions, including fees, and other changes that better capture the intent of the U.S. EPA. Following is a discussion of areas where the draft rules differ from, clarify, or supplement the federal rules, or fill a gap in state language.

Key Elements of the Federal NSR Rule and the Draft State NSR Rule

Following is a discussion of the key provisions of the draft rule:

<u>IDEM's draft rule differs from the U.S. EPA's NSR Reform rule as follows:</u>

- Continues to regulate the hazardous air pollutants that are currently regulated under the definition of "significant" in 326 IAC 2-2-1(xx). As a result, the definition of "regulated NSR pollutant" in 326 IAC 2-2-1(uu) has been modified from the federal definition to include asbestos, beryllium, mercury, vinyl chloride, and hydrogen fluoride as part of fluorides. The federal rule provides less protection to the public in this respect. IDEM recommends that Indiana continue to require preconstruction review of projects that emit these toxic pollutants to prevent backsliding of current requirements.
- IDEM agrees with the principle of designating certain very well controlled sources as "clean". As long as the source continues to operate in accordance with its permit limit and conditions and does not increase its capacity to emit

pollutants, the owner or operator can modify the source without going through review. However, certain specific elements of the federal clean unit designation will result in less environmental protection than the current program. These elements concern the process for retroactively evaluating a unit that did not go through a BACT or LAER permit process at the time of construction. IDEM therefore proposes to adopt the clean unit designation process with the following changes:

< The federal process relies solely on information in the RACT/BACT/LEAR Clearinghouse (RBLC). That information is only an initial step in a complete BACT or LAER determination. IDEM routinely reviews sources of additional information such as the actual permit documents, the results of performance tests, any subsequent permit modifications, and the compilation of emissions information collected by EPA to develop NESHAPs under Section 112(d) of the Clean Air Act. The federal rule states that a control technology is presumed to be comparable to BACT level if it achieves an emission limitation that is equal to or better than the average of emissions limitations achieved by all the sources documented in the RBLC database for which a BACT or LAER determination has been made within the preceding five years and for which it is technically feasible to apply the BACT or LAER control technology. The federal rule also states that the control technology is presumed to be comparable to a LAER level if it achieves an emission limitation that is at least as stringent as any one of the five best performing similar sources in the RBLC database for which a LAER determination has been made within the preceding five years. This can clearly result in a clean unit designation with emissions that are greater than would have been established under the PSD or nonattainment NSR SIP. While the process for establishing the emission level for a clean unit are less than those required to perform a real BACT or LAER determination, they can still be significant. Additional resources are required of both the applicant and the agency to perform the air quality analyses required under the federal rule. Based on these concerns, IDEM proposes an evaluation equivalent to the BACT or LAER level of control evaluation that the emissions units that are automatically designated clean units must undergo, thus ensuring consistency and improvement in air quality by maximizing emissions reductions.

< IDEM proposes that emissions units with control technologies that are up to ten years old and were not approved under a major new source review permit program be reviewed under current standards for BACT and LAER. This may require more resources for the units that can qualify under this test, but the units approved would be cleaner and the designation would then last a full ten years from the determination. Resources would not be expended on emission units that do not qualify under this test. IDEM does not propose to change the federal provisions that provide this test to sources that have obtained major new source review permits in the past or that undergo BACT or LAER review in the future. With these changes, the clean units under the draft state rules will be cleaner than those under federal rules, and less resources will be needed to obtain or approve the clean unit. Also, under IDEM's suggested changes the source would get the clean unit designation for a full ten years.

<u>IDEM draft rule language that is not in U.S. EPA's NSR Reform rule, but is consistent with U.S. EPA's intent and necessary to implement the changes:</u>

- Revises the fee requirements in 326 IAC 2-1.1-7(3)(D) to establish fees for the review and issuance of clean unit designations for units that did not go through major NSR. This review will be similar to the control technology analyses for BACT under 326 IAC 2-2-3, or LAER, therefore IDEM proposes a similar fee. Revisions to 326 IAC 2-1.1-7(3)(C) were not required because the language already requires the appropriate fee for any air quality analysis required by 326 IAC 2-2 or 326 IAC 2-3.
- Adds provisions to the fee requirements in 326 IAC 2-1.1-7 to establish fees for the review and issuance of a PAL. The fee will be based on the limit in tons for each PAL pollutant. The fee is $40 per ton per PAL pollutant, not to exceed the maximum fee of $40,000. IDEM believes this level of fee is appropriate given the complexity of developing PAL conditions. IDEM expects these permits to be more difficult to write and enforce than the Title V operating permits, for which the annual fee is $33 per ton.
- Adds the phrase "are affected by the project" to 326 IAC 2-2-1(e)(1)(A) and (e)(2)(A) and 326 IAC 2-3-1(d)(1)(A) and (d)(2)(A). The purpose of adding the phrase was to clarify that emissions from startups, shutdowns, and malfunctions do not have to be included in certain instances. If the emissions are not expected to be affected by the project (e.g., no additional startups or shutdowns or malfunctions are expected due to the

implementation of the project), sources do not need to include them in the calculations.

- References clean unit designations in the air quality analysis section applicability in 326 IAC 2-2-4, 326 IAC 2-2-5, and 326 IAC 2-2-7 and the source information section in 326 IAC 2-2-10. Since IDEM removed the clean unit provisions from 326 IAC 2-2 and included it in a separate new rule, it may no longer be clear that the existing modeling and air quality analysis methods apply to clean unit designations when an air quality analysis is required. Therefore, IDEM clarified that the existing procedures should be followed for any required air quality analyses and that IDEM has the authority to require that the applicant submit this information.
- Adds language that was not in the federal rule to provide a mechanism to clearly establish the production capacity, throughput, or potential to emit for a unit that is designated as a clean unit. The phrase "such as potential to emit, production capacity, or throughput" was added in the following portions of the rule: 326 IAC 2-2.2-1(f)(4); 326 IAC 2-2.2-2(h)(4); 326 IAC 2-3.2-1(f)(4); and 326 IAC 2-3.2-2(h)(4). In the preamble to the federal NSR reform rules, U.S. EPA clarified that it intended to prohibit increases in the production capacity or throughput from the clean units beyond the limitations specified in the clean unit designation approval. In addition, the initial demonstration to show that the allowable emissions from a clean unit will not cause or contribute to a violation of the NAAQS or PSD increment or an air quality related value (AQRV) will not be preserved throughout the span of the clean unit designation if it is not established in the approval. Therefore, IDEM proposes to establish the production capacity, throughput, or potential to emit as basis for BACT or LAER in the clean unit designation approval to help owners and operators and the public clearly identify the scope of a modification and its impact on the clean unit designation. This will reduce uncertainty and confusion regarding what changes may invalidate a designation. This change from the federal regulations will help with establishing requirements that are consistent with intent stated in the preamble, are beneficial to the environment, and are easier to implement.
- Includes specific provisions in 326 IAC 2-3.3-1 (g) and (h) to require a source to obtain offsets for a significant net increase in collateral emissions from a pollution control project (PCP) if the area is classified as nonattainment for the collateral pollutant or to obtain offsets for an increase in volatile organic compound (VOC) emissions that is not de minimis in an area that is classified as serious or severe nonattainment for ozone. This requirement was included in the preamble for the federal NSR reform (refer to 67 FR 80237), but was not included in the rule language. IDEM included the language to clarify that sources are required to obtain offsets on a one-to-one ratio and to demonstrate that the PCP will not cause or contribute to air quality violations in a nonattainment area.
- Prohibits the issuance of a plantwide applicability limitation (PAL) for a pollutant for which an area is classified as extreme nonattainment. This prohibition was included in the preamble for the federal NSR reform (refer to 67 FR 80217), but was not included in the rule language. There are no extreme nonattainment areas in Indiana at this time. IDEM included the language to clarify that if, in the future, an area of Indiana is designated as extreme nonattainment, IDEM will not issue PALs for that pollutant in that area.
- Adds provisions for termination/revocation of PALs in 326 IAC 2-2.4-15 and 326 IAC 2-3.4-15. The federal rule did not contain a specific mechanism for terminating or revoking a PAL. IDEM proposes provisions for the termination or revocation of a PAL if a source requests to terminate a PAL before the ten year period expires or if IDEM needs to revoke a PAL before the ten year period expires if a source does not comply with the limitations. These provisions are similar to the federal expiration provisions for a PAL. The state rule includes provisions for reallocating the emissions or reestablishing the limits that applied to the emissions units prior to when the PAL was established. This will ensure that the emissions from these units do not exceed significance levels for applicability and the environmental benefits of a PAL continue after termination.
- Revises or adds the following provisions in the Part 70 source modification provisions at 326 IAC 2-7-10.5:

  (1) Revises the significant source modification provisions regarding pollution control project exclusions in 326 IAC 2-7-10.5(d)(8) such that the rule only requires that unlisted projects (i.e., those that are not listed in the definition of "pollution control project" in 326 IAC 2-2-1 or 2-3-1) must get an approval to use the pollution control project exclusion prior to beginning construction, in accordance with the provisions in 326 IAC 2-2.3-1 and 326 IAC 2-3.3-1.

  (2) Adds the provision in 326 IAC 2-7-10.5(d)(10) to provide the approval mechanism for a clean unit designation in accordance with 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2 for a unit

that does not go through major NSR.

- Adds a provision to the Part 70 administrative amendment requirements at 326 IAC 2-7-11(a)(8) to clarify that this mechanism may be used to incorporate those changes listed that are exempt from source modification requirements.
- Adds the following provisions to the Part 70 permit modification requirements at 326 IAC 2-7-12:

  (1) Adds a minor permit modification provision at 326 IAC 2-7-12(b)(1)(F) to provide the mechanism for IDEM to incorporate the permit requirements for a clean unit designation for a unit that has gone through major NSR.

  (2) Adds a minor permit modification provision at 326 IAC 2-7-12(b)(1)(G) to provide the mechanism for IDEM to incorporate the applicable permit requirements for a pollution control project exclusion for a listed pollution control project.

  (3) Adds a significant permit modification provision at 326 IAC 2-7-12(d)(1) to provide the mechanism for IDEM to establish, renew, terminate, revoke, or revise a PAL.

<u>IDEM draft rule language that is not directly from NSR Reform but is a suggested change:</u>

- Adds the definition of "federally enforceable" to 326 IAC 2-2-1 and 326 IAC 2-3-1. Since this term is used in the federal rules, the federal definitions from 40 CFR 51.166 and 40 CFR 51.165 were added to the state rules.
- Removes the term "federally" from uses of the term "federally enforceable" in the definition of "allowable emissions" in 326 IAC 2-3-1(c) and the definition of "potential to emit" in 326 IAC 2-3-1(ii). IDEM removed this term to make the terms consistent with the PSD definitions and since court decisions in 1995 (Nat. Mining Assoc. v. U.S. EPA, 59 F.3d 1351 (D.C. Cir. 1995) and Chem. Manufacturer's Assoc. v. U.S. EPA, 70 F.3d 637, (D.C. Cir. 1995)) vacated the requirement. The term "enforceable" will now allow terms that are enforceable by the state as well as the U.S. EPA.
- Adds language to the applicability criteria of 326 IAC 2-3-2 that clarifies that the de minimis test must still be used for increases in VOC emissions in areas that are classified as serious or severe nonattainment for ozone and that the two step test that determines if an increase is significant and a significant net emissions increase should not be used in place of the de minimis test in those areas. Since U.S. EPA never revised the federal rules to include the de minimis provisions from the CAA, this issue was not addressed in the federal rule. The language is necessary because the de minimis test does not use emissions increases and decreases in the same way as the test for a significant net emissions increase.
- Removes the term "federally" from the current 326 IAC 2-3-2(c). This change was made to make the state language consistent with current federal language at 40 CFR 51.165(a)(5)(ii) to avoid SIP approval issues later since the provision is more stringent in the federal language. It is not related to the court decision in Chemical Manufacturer's Association, et al. v. EPA.
- Adds language from 40 CFR 51.165(a)(5)(i) to 326 IAC 2-3-3(a) concerning severability. This change was made since this federal language is required by the minimum SIP requirements contained in 40 CFR 51.165.
- Adds language from 40 CFR 51.165(a)(3)(ii)(G) to 326 IAC 2-3-3(b). This language was added directly from the federal rule because it is referenced in the new definition of "baseline actual emissions" in 326 IAC 2-3-1, but the language was not included in the current SIP-approved version of 326 IAC 2-3.
- Changes the term "uncontrolled emission rate" to "potential to emit" in 326 IAC 2-3-3(b)(4). This change was made to make the state language consistent with current federal rule language at 40 CFR 51.165(a)(3)(ii)(A).
- Revises the provisions for claiming emissions reductions for offset credit for shutdowns of sources in nonattainment areas in 326 IAC 2-3-3(b)(5). When 326 IAC 2-3-3(b)(5) was originally adopted, a version of the Emission Offset Interpretive Ruling from 1979 was used. On June 28, 1989, U.S. EPA revised the interpretive ruling and 40 CFR 51.165. The provisions restricting the use of prior shutdown credits were relaxed for states that had an approved attainment plan because U.S. EPA stated that there were adequate safeguards to prevent abuses under an approved SIP because the SIP provides independent assurance of reasonable further progress. In addition, the U.S. EPA reasoned that the offset rules should encourage the construction of new sources that result in progress toward attainment by replacing older, dirtier sources. Additional restrictions regarding the timing for the shutdown and the date of the most recent attainment demonstration and emission inventory were included as safeguards. IDEM never revised 326 IAC 2-3-3 to reflect these federal revisions. Therefore, IDEM has proposed to update this portion of the rule during this rulemaking.
- Adds language to the applicability criteria for clean units in 326 IAC 2-3.2-1 and 2-3.2-2 to clarify that the clean unit test can be used when

reviewing a modification to determine if it is de minimis in an area that is classified as serious or severe nonattainment for ozone if the modification does not otherwise cause the emission unit to lose clean unit status. Since U.S. EPA never revised the federal rules to include the de minimis provisions from the CAA, this issue was not addressed in the federal rule. Since the purpose of the clean unit designation is to provide flexibility to clean units as long as the clean unit status is preserved, IDEM clarified that the unit would not have to evaluate a modification at a clean unit to determine if it was de minimis as long as the clean unit status is preserved.

- Adds a provision to language taken from the federal rules in 326 IAC 2-2.4-6 and 326 IAC 2-3.4-6 to clarify what level should be added to the baseline actual emissions when establishing the PAL level for VOC emissions in an area that is classified as serious or severe nonattainment for ozone. The federal rules have not been updated to include provisions of Section 182(c)(6) of the 1990 CAA Amendments that require that a de minimis test be used instead of the typical "significant net emissions increase" test in an area that is classified as serious or severe nonattainment for ozone. The state rules include these provisions. Therefore, IDEM clarifies that the de minimis level should be used for these areas in lieu of using the federal language that broadly references the significant levels in the CAA.
- Requires new sources that are major stationary sources to get a Part 70 permit immediately instead of a minor source operating permit (MSOP) with the requirement to apply for a Part 70 permit within twelve months of beginning operations. This change was made to 326 IAC 2-5.1 to ensure that new major stationary sources will be able to receive clean unit designations in their Part 70 permit and to avoid past confusion caused by issuing major stationary sources temporary MSOPs.

Scheduled Hearings

First Public Hearing: January 7, 2004, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana.

Second Public Hearing: June 2, 2004, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

(1) All existing physical conditions and the character of the area affected.

(2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.

(3) Zoning classifications.

(4) The nature of the existing air quality or existing water quality, as appropriate.

(5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

(6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:

(A) human, plant animal, or aquatic life; or

(B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The new and amended rules are consistent with the federal rules in most areas, however, Indiana is proposing some variations to provide better environmental protection for Indiana's citizens.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the departments responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Air Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Secretary of State.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Christine Pedersen, Rule Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).